IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CONNELIUS A. HAIRSTON-LASH	:	
	:	
v.	:	CIVIL ACTION
	:	NO. 00-2070
R.J.E. TELECOM, INC., formerly	:	
O.S.P. CONSULTANTS, INC., et. al.	:	

MEMORANDUM AND ORDER

HUTTON, J. October 26, 2000

Presently before this Court is the Defendants R.J.E. Telecom, Inc. and Dale Mousseau's Motion for Leave to File Affirmative Defense (Docket No. 13) and the Plaintiff's Response thereto (Docket No. 20).

I. BACKGROUND

The Plaintiff, Connelius A. Hairston-Lash, originally filed a Complaint in this matter in the Court of Common Pleas of Montgomery County, Pennsylvania alleging a violation of her civil rights, intentional infliction of emotional distress, and negligence. R.J.E. Telecom, Inc. and Dale Mousseau (the Defendants) removed the case to this Court on April 20, 2000. On April 26, 2000, the Defendants filed an answer to the Plaintiff's Complaint which contained nine defenses. Since that time, the parties have been conducting discovery pursuant to an Amended Scheduling Order. Discovery was to be completed by October 5, 2000 with both parties filing their pre-trial memoranda with this Court by October 18,

2000. On September 21, 2000, the Defendants filed a motion for leave to amend their answer. The Defendants wish to allege two additional defenses to the Plaintiff's negligence claim: (1) it is barred by the statute of limitations; and (2) it is barred by the exclusivity provision of the Pennsylvania Workers' Compensation Act (PWCA), 77 Pa. C.S.A. § 481(a). The Plaintiff filed her response on October 12, 2000.

II. DISCUSSION

A. Standards For Leave To Amend

Federal Rule of Civil Procedure 15(a) allows a defendant to amend its answer after it has already been filed:

> A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served. Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading whichever period may be the longer, unless the court otherwise orders.

Fed. R. Civ. P. 15(a). To explore the contours of this rule and detail when a defendant may amend his answer, the United States Supreme Court explained that:

> Rule 15(a) declares that leave to amend "shall be freely given when justice so requires"; this mandate is to be heeded . . . . If the underlying facts or circumstances relied upon by a plaintiff may be a proper

> subject of relief, he ought to be afforded an opportunity to test his claim on the merits. In the absence of any apparent or declared reason--such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc.--that leave sought should, as the rules require, be "freely given." Of course, the grant or denial of an opportunity to amend is within the discretion of the District Court, but outright refusal to grant the leave without any justifying reason appearing for the denial is not an exercise of discretion; it is merely abuse of that discretion and inconsistent with the spirit of the Federal Rules.

Foman v. Davis, 371 U.S. 178, 182, 83 S.Ct. 227, 9 L.Ed.2d 222 (1962). The United States Court of Appeals for the Third Circuit has interpreted these factors to mean that "[i]n the absence of substantial or undue prejudice, denial [] must be based on bad faith or dilatory motives, truly undue or unexplained delay, repeated failures to cure the deficiency by amendments previously allowed, or futility of amendment." Lorenz v. CSX Corp., 1 F.3d 1406, 1413-14 (3d Cir. 1993). "The passage of time, without more, does not require that a motion to amend [] be denied; however, at some point, the delay will become 'undue', placing an unwarranted burden on the court, or will become 'prejudicial', placing an unfair burden on the opposing party." Adams v. Gould Inc., 739 F.2d 858, 868 (3d Cir. 1984), cert. denied, 469 U.S. 1122, 105 S.Ct. 806, 83 L.Ed.2d 799 (1985). In this regard, the concept of undue delay is inextricably woven with the concept of prejudice.

See Boileau v. Bethlehem Steel Corp., 730 F.2d 929, 939 (3d Cir. 1984).

A required showing of prejudice is consistent with this Circuit's position that "'prejudice to the non-moving party is the touchstone for the denial of an amendment.'" Lorenz, 1 F.3d at 1413 (quoting Cornell & Co. v. Occupational Safety & Health Review Comm'n, 573 F.2d 820, 823 (3d Cir. 1978)). In this context, prejudice involves a "show[ing] that [the non-moving party] was unfairly disadvantaged or deprived of the opportunity to present facts or evidence which it would have offered had the ... amendments been timely." Heyl & Patterson Intern. v. F.D. Rich Housing, 663 F.2d 419, 426 (3d Cir. 1981). Prejudice does not result merely from a party's having to incur additional counsel fees; nor does it result from a delay in the movement of the case. Adams, 739 F.2d at 869. Prejudice under Rule 15 "means undue difficulty in prosecuting [or defending] a lawsuit as a result of a change in tactics or theories on the part of the other party." Deakyne v. Commissioners of Lewes, 416 F.2d 290, 300 (3d Cir. 1990).

In addition to prejudice, futility of the amendment is a reason to deny leave to amend. See Foman, 371 U.S. at 182. Where a party opposes an amendment on the ground of futility, leave to amend an Answer in order to assert an affirmative defense should be denied "only if no set of facts can be proved under the amendment

to the pleadings that would constitute a valid and sufficient" defense. Miller v. Rykoff-Sexton, Inc., 845 F.2d 209, 214 (9th Cir. 1988).

B. Analysis of the Defendant's Motion

In their motion, the Defendants seek to amend their answer to add two additional affirmative defenses to Plaintiff's negligence claim. The Defendants assert that the Plaintiff's claim is barred by the statute of limitations and by the exclusivity provision of the PWCA. Defense counsel claims that the addition of these defenses is not done in bad faith or with dilatory motive but instead results from a strategic decision which was made after specific allegations surrounding the Plaintiff's negligence claim were unveiled during discovery. In addition, the Defendants allege there will be no prejudice to the Plaintiff resulting from this amendment.

The facts surrounding this motion do not support a claim of bad faith or dilatory motive against the Defendants. In addition, the amendments to the Defendants' answer do not appear to be futile or serve no legitimate purpose. Therefore, the Court must determine if there has been an undue delay. The Plaintiff claims that the untimeliness of the motion together with the Defendants' inadequate explanation for the delay should itself be sufficient to deny the Defendants' motion. However, the Third Circuit has found that delay alone is not sufficient grounds to deny an amendment.

See Cornell & Co., Inc., 573 F.2d at 823. As previously discussed, undue delay involves the passage of time coupled with an added burden on the Court or unfair prejudice to the opposing party. See Adams, 739 F.2d at 868.

Despite the fact that the Defendants' motion was filed on the eve of the discovery deadline and five months after their original answer, the proposed amendments will not burden the Court or have a prejudicial effect on the Plaintiff. First, the statute of limitations and exclusivity defenses that the Defendants seek to add "'address solely legal issues and require minimum additional trial preparation.'" See Heyl & Patterson Intern., 663 F.2d at 426 n.5 (quoting the District Court's memorandum and order). As a result, the Plaintiff has not been "deprived of the opportunity to present facts or evidence which it would have offered had the . . . amendments been timely." Id. at 426. Any facts or evidence could be presented at this time. Therefore, the change in tactics cannot be said to produce any undue difficulty on the Plaintiff. In addition, the case has not yet been set for a specific trial date which means the Plaintiff still has time to conduct whatever minimum amount of additional trial preparation is necessary without causing a delay in the proceedings. Because the Plaintiff has not been prejudiced in their ability to rebut these defenses and there should not be a significant additional burden on the Court, the Defendants' motion is granted and the amended answer attached to

the Defendants' motion is considered filed with the Court.

An appropriate Order follows.

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O R D E R

AND NOW, this 26th day of October, 2000, upon consideration of the Defendants R.J.E. Telecom, Inc. and Dale Mousseau's Motion for Leave to File Affirmative Defense (Docket No. 13) and the Plaintiff's Response thereto (Docket No. 20), IT IS HEREBY ORDERED that the Defendants' Motion is **GRANTED**.

IT IS FURTHER ORDERED that the Defendants' Amended Answer is considered filed with the Court.

BY THE COURT:

_____
HERBERT J. HUTTON, J.